

Before the  
Federal Communications Commission  
Washington, D.C.

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DEC 2 - 1996

Federal Communications Commission  
Office of Secretary

In the Matter of	)	
	)	
Implementation of the Local Competition	)	
Provisions of the Telecommunications Act	)	CC Docket No. 96-98
of 1996	)	
	)	
Interconnection Between Local Exchange	)	
Carriers and Commercial Mobile Radio	)	CC Docket No. 95-185
Service Providers	)	
	)	
Area Code Relief Plan for Dallas and	)	DOCKET FILE COPY ORIGINAL
Houston, Ordered by the Public Utility	)	NSD File No. 96-8
Commission of Texas	)	
	)	
Administration of the North American	)	CC Docket No. 92-237
Numbering Plan	)	
	)	
Proposed 708 Relief Plan and 630	)	
Numbering Plan Area Code by Ameritech-	)	IAD File No. 94-102
Illinois	)	

**REPLY**

Omnipoint Communications, Inc. ("Omnipoint"), by its attorneys, hereby replies to oppositions filed against Omnipoint's October 6, 1996 "Petition for Reconsideration and Clarification" (the "Petition") of the Commission's Second Report and Order and Memorandum Opinion and Order, FCC 96-333 (rel. August 8, 1996) (the "Report and Order").

No commenter has offered a substantive objection to Omnipoint's petition. Instead, US West simply refers to it as "radical," while BellSouth misunderstands the Petition and errantly claims that it is procedurally improper. Omnipoint requests that the Commission give due consideration to the MTA-based NPA plan, and ignore the off-hand, nonsubstantive remarks of the two incumbent RBOCs.

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## **Discussion**

In its Petition, Omnipoint urged the Commission to fundamentally reconsider its "Area Code Implementation Guidelines" (Report and Order at ¶¶ 281-293) to provide for area code overlays based on Major Trading Areas ("MTAs"). Omnipoint asked that the Commission impose area codes that cover an entire MTA geographic area, and carriers could voluntarily choose to opt for number assignments on an MTA-basis.

Voluntary MTA-based area code assignments could dramatically improve the current numbering administration crises that disproportionately impact new entrants into local telecommunications. As Omnipoint explained in its Petition (at 6-14), the public interest benefits of voluntary MTA-based numbering assignments include:

- Alleviation of strains on the current state number allocation systems that demand significant numbering resources from new entrants;
- Reduction of market entry barriers for new entrants in local communications by avoidance of the arduous state-by-state number allocation processes;
- Quicker response to market demand by new entrant carriers because (a) carriers could enter contiguous intra-MTA markets but avoid state numbering allocation processes, and (b) market strategies need not be revealed as a consequence of obtaining new numbers;
- More efficient use of numbering resources because an MTA-based carrier could spread its number resources over a larger geographic area (instead of requesting excessive number allocations on a state-by-state basis)
- Reduction of the costs of wireless service by avoidance of "stockpiling" of wireless handsets pre-programmed with traditional exchange area telephone numbers; and
- Implementation of intra-MTA location number portability.

Because all carriers would be eligible for voluntary MTA-based area codes, the proposal is technology neutral and does not favor one class of carriers over any other. As

Omnipoint has presented before, with most MTAs encompassing several states, the Commission itself, and not the states, must oversee the implementation of voluntary MTA area code overlays.

The oppositions of U.S. West and BellSouth do not in any way detract from Omnipoint's Petition. US West's passing footnote that the Omnipoint proposal is "radical" can hardly be seen as an opposition at all. Opposition of US West at 10, n. 14. After all, the 1996 Act, and implementation proceedings such as this one, are themselves revolutionizing the telecommunications landscape. *See* Speech of Chairman Reed Hundt, "The Communications Revolution: Stop Making Sense" (Oct. 2, 1996) ("the only thing natural about communications monopolies is that naturally the companies with market power will try to keep that power unless we have rules that constrain their potential anticompetitive impulses").<sup>1</sup> An integral part of that change mandated by Congress in Section 251(e) is to vest the Commission with exclusive authority over numbering administration issues, thereby divesting one of the oldest and strongest vestiges of the RBOC monopoly stranglehold on the local telecommunications marketplace.<sup>2</sup> In short, while the incumbent LECs undoubtedly view new entrant competition and alternative regulatory paradigms as "radical," it is exactly what Congress has called for. Omnipoint's

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<sup>1</sup> *See also* Remarks of Commissioner Susan Ness, "The New Telecommunications Marketplace: Radical Changes and Golden Opportunities" (Feb. 22, 1996); Remarks of Commissioner Rachelle B. Chong, "A Camelot Moment -- the Telecommunications Act of 1996" (Feb. 15, 1996).

<sup>2</sup> Even the Eighth Circuit "acknowledge[s] that portions of the Telecommunications Act of 1996 expressly grant [to the Commission] authority over some aspects of intrastate telephone service. *See, e.g.,* 47 U.S.C. A. § 251(e) (West Supp. May 1996) (FCC authority regarding number administration)." Iowa Util. Bd. v. FCC, 1996 WL 589204, \* 4 (8th Cir. Oct. 15, 1996).

"radical" proposal should be carefully considered as one that could further the purposes of the 1996 Act.

Omnipoint is surprised at how grossly BellSouth misrepresents the thrust of the Petition.<sup>3</sup> The Petition does not at all suggest removal of the states' area code relief planning role. In fact, Omnipoint described in the Petition how the MTA overlay plan would complement the state area code assignment process by alleviating the critical demand for numbers and avoiding the need for involuntary intrastate code splits and overlays. Petition at 9, 16. Further, Omnipoint never advocated a "nationwide" area code assignment; even a cursory review of the Petition's table of contents demonstrates that Omnipoint's proposal is for the Commission to establish one or more area code overlays covering each MTA geographic region from which any carrier could apply for NXX codes.

BellSouth's contention that the Petition is "procedurally improper"<sup>4</sup> and has been given "due consideration" by the Industry Numbering Committee ("INC") is even more surprising. Omnipoint is well within its rights to request reconsideration of those aspects of the Report and Order (at ¶¶ 281-293) which delegate authority to the states, and cause inefficiencies for its MTA-based PCS operations.<sup>5</sup> It had raised the MTA-based area code proposal in both its comments below and in an *ex parte* presentation to Commission

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<sup>3</sup> BellSouth's assertions that Omnipoint has requested "to remove state oversight relief implementation," and "to open nationwide non-geographic area codes" are just factually incorrect. Opposition of BellSouth at 6.

<sup>4</sup> BellSouth fails to articulate what procedure, or what part of the Commission's rules, it believes have been violated.

<sup>5</sup> 47 C.F.R. § 1.429(a) ("Any interested person may petition for reconsideration of a final action in a [rule making] proceeding").

staff.<sup>6</sup> Unfortunately, the Report and Order completely failed to address the merits of Omnipoint's comments and so it is entirely appropriate for Omnipoint to seek reconsideration of those portions of the rules and order adopted which conflict with the proposal.

BellSouth's suggestion that the INC decision somehow precludes Commission consideration or makes the Petition improper is just misplaced. As a matter of law,<sup>7</sup> INC now holds no authority with respect to the numbering plan, since the Commission maintains exclusive authority, except as delegated directly to the North American Numbering Council, and NANP administrator, or the states.<sup>8</sup> Thus, BellSouth's suggestion that the Omnipoint proposal should be "reintroduced at the INC" borders on the frivolous. Further, Omnipoint's prior proposal to INC was not given "due consideration"<sup>9</sup> and, in any event, does not constrain the Commission in any way from a full consideration of the issues. *See Report and Order*, at ¶ 271 ("We retain our authority to set policy with respect to all facets of numbering administration in the United States. . . . we preserve our ability to act flexibly and expeditiously on broad policy issues and to resolve any dispute related to numbering administration pursuant to the 1996 Act.").

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<sup>6</sup> Reply Comments of Omnipoint Communications, Inc., CC Dkt. No. 96-794 (June 21, 1996); Ex Parte Letter from Mark J. O'Connor to William F. Caton, CC Dkt. No. 96-98 (June 20, 1996); *see also* Comments of Omnipoint Communications, Inc., CC Dkt. 96-98 (May 20, 1996).

<sup>7</sup> 47 U.S.C. § 251(e).

<sup>8</sup> Because INC was largely dominated by incumbent LECs, and pursued policies consistent with their anti-competitive interests, it is only fitting that INC should now be divested of authority. *See Report and Order* at ¶ 261 ("Congress also recognized that ensuring fair and impartial access to numbering resources is a critical component of encouraging a robustly competitive telecommunications market in the United States.").

<sup>9</sup> Omnipoint's proposal was rejected by INC without any written explanation.

**Conclusion**

For the reasons stated herein and in the Petition, Omnipoint urges the Commission to establish one or more MTA-based area codes for all telecommunications carriers.

Respectfully submitted,

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